

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES INVESTOR PROTECTION
CORPORATION,**

Plaintiff-Applicant,

v.

**BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,**

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

**Adv. Pro. No. 08-01789 (SMB)
SIPA Liquidation
(Substantively Consolidated)**

**DECLARATION IN
OPPOSITION TO THE
TRUSTEE'S MOTION TO
AFFIRM APPLICATION OF
THE NET INVESTMENT
METHOD TO THE
DETERMINATION OF
CUSTOMER TRANSFERS
BETWEEN BLMIS
ACCOUNTS**

I, ELLEN MISHKIN, declare pursuant to 28 U.S.C. § 1746, that the following is true based upon my personal knowledge and documents I possess:

1. My parents, Grace Mishkin and William Mishkin, were long-term customers of Bernard L. Madoff. It is my understanding that my parents opened an account with Madoff in 1985, through Avellino and Bienes. That account was transferred to Madoff in 1992, and continued with him after Madoff formed Bernard L. Madoff Investment Securities LLC ("BLMIS") on December 4, 2000.

2. In August 2006, my mother spoke with someone in Madoff's office to see if BLMIS would accept new accounts for my sister, Julia Mishkin, and me. My mother was told by one of Madoff's administrators that BLMIS would not open new accounts for us but that the family should form a family trust, send BLMIS a copy of the trust agreement, and BLMIS would keep the same account number for the family but change the name to the Mishkin Family Trust.

3. Following Madoff's instructions, my family formed a family trust in 2006 called the Mishkin Family Trust (the "Trust") dated September 1, 2006. A copy of this document is annexed hereto as Exhibit A.

4. On September 6, 2006, my sister, Julia Mishkin, and her husband, Andrew Seear, deposited \$200,000 into the Trust account, representing money they had inherited from Mr. Seear's parents. This deposit is recognized in the Trustee's October 19, 2009 determination letter at 4. See Exhibit B.

5. On September 26, 2006, I deposited \$100,000 into the Trust account. This money represented my life savings. See Exhibit B at 4.

6. In total, over the life of my BLMIS investment, I withdrew \$23,279.91, leaving me as a "net loser" for \$76,720.09. A list of my withdrawals is annexed hereto as Exhibit C. Each of these withdrawals is reflected in my bank statements which are available for the Trustee's inspection, if he so chooses. BLMIS' records would only show a check written to the Trust. Once the Trust received the check from BLMIS, the Trust would then issue checks to me and to my sister. See Exhibit F.

7. In total over the life of my sister's BLMIS investment, she and her husband withdrew a total of \$50,653.72, leaving them as "net losers" for

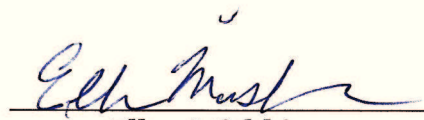
\$149,346.28. A list of Julia's withdrawals is annexed hereto as Exhibit D. Each of these withdrawals is reflected in Julia's bank statements which are available for the Trustee's inspection, if he so chooses. Again, BLMIS' records would only show the checks written to the Trust but, upon receipt, the Trust would then issue checks to my sister. See Exhibit F.

8. The Trustee has never denied the accuracy of the aforesaid facts. Rather, in his October 19, 2009 determination letter, the Trustee took the position that all deposits and withdrawals for the account which began in the name of Grace and William Mishkin and became the Mishkin Family Trust in 2006 must be viewed as one customer and, based on that approach, the Trustee claimed that the total deposits from 1992 through 2008 were \$1,062,817.03 and the total withdrawals were \$1,305,189.28. See Exhibit B at 1, 4-5.

9. We filed an objection to the Trustee's determination letter in which we asserted, *inter alia*, that each family member whose money was in the Trust account was a "customer" under SIPA. See Exhibit E.

10. Yet, the Trustee disallowed our separate SIPC claims because he took the position that the Trust as a whole had no "net equity."

11. I declare under penalty of perjury that the aforesaid facts are true and correct.


Ellen Mishkin